

BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

Debra Marciocchi
914 East Decatur
Fresno, CA 93720

Registered Nurse License No. 456511

Respondent

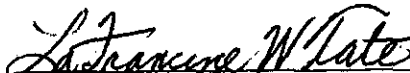
Case No. 2007-194

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Registered Nursing, Department of Consumer Affairs, as it's Decision in the above entitled matter.

This Decision shall become effective on October 29, 2007.

IT IS SO ORDERED September 28, 2007.



President
Board of Registered Nursing
Department of Consumer Affairs
State of California

1 EDMUND G. BROWN, JR., Attorney General
of the State of California
2 ARTHUR D. TAGGART
Supervising Deputy Attorney General
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8 Attorneys for Complainant

9 **BEFORE THE**
BOARD OF REGISTERED NURSING
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

12 **DEBRA J. MARCIOCCHI, aka**
13 **DEBRA JEAN FRANZ, aka**
14 **DEBRA JEAN DAWSON**
914 East Decatur
Fresno, California 93720

15 Registered Nurse License No. 456511

16
17 Respondent
18

Case No. 2007-194

OAH No.

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

19 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the
20 above-entitled proceedings that the following matters are true:

21 PARTIES

22 1. Complainant Ruth Ann Terry, M.P.H., R.N., is the Executive Officer of
23 the Board of Registered Nursing. She brought this action solely in her official capacity and is
24 represented in this matter by Edmund G. Brown, Jr., Attorney General of the State of California,
25 by Jessica M. Amgwerd, Deputy Attorney General.

26 2. Respondent Debra J. Marciocchi, Register Nurse license No. 456511, is
27 not represented by counsel.

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3. On or about August 31, 1990, the Board of Registered Nursing issued Registered Nurse License No. 456511 to Debra J. Marciocchi, (Respondent).

JURISDICTION

4. Accusation No. 2007-194 was filed before the Board of Registered Nursing (Board), Department of Consumer Affairs, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on February 14, 2007. Respondent timely filed her Notice of Defense contesting the Accusation. A copy of Accusation No. 2007-194 is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 2007-194. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

6. Respondent is fully aware of her legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel at her own expense; the right to confront and cross-examine the witnesses against her; the right to present evidence and to testify on her own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

8. Respondent admits that she violated Business and Professions Code section 2761(a), 2762(a), 2762(b) by obtaining, possessing, and self administering controlled substances (i.e., alcohol, morphine, and fentanyl) from March 25, 2002 through circa January 18, 2005. On March 25, 2002, Respondent fraudulently took the fentanyl from the hospital supplies

in violation of Health and Safety Code section 11173(a).

9. Respondent agrees that her Registered Nurse License is subject to discipline and she agrees to be bound by the Board of Registered Nursing's imposition of discipline as set forth in the Disciplinary Order below.

RESERVATION

10. The admissions made by Respondent herein are only for the purposes of this proceeding, or any other proceedings in which the Board of Registered Nursing or other professional licensing agency is involved, and shall not be admissible in any other criminal or civil proceeding.

CONTINGENCY

11. This stipulation shall be subject to approval by the Board of Registered Nursing. Respondent understands and agrees that counsel for Complainant and the staff of the Board of Registered Nursing may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent or her counsel. By signing the stipulation, Respondent understands and agrees that she may not withdraw her agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

12. The parties understand and agree that facsimile copies of this Stipulated Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same force and effect as the originals.

13. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

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1 3. **Report in Person.** Respondent, during the period of probation, shall
2 appear in person at interviews/meetings as directed by the Board or its designated
3 representatives.

4 4. **Residency, Practice, or Licensure Outside of State.** Periods of
5 residency or practice as a registered nurse outside of California shall not apply toward a reduction
6 of this probation time period. Respondent's probation is tolled, if and when she resides outside
7 of California. Respondent must provide written notice to the Board within 15 days of any change
8 of residency or practice outside the state, and within 30 days prior to re-establishing residency or
9 returning to practice in this state.

10 Respondent shall provide a list of all states and territories where she has ever been
11 licensed as a registered nurse, vocational nurse, or practical nurse. Respondent shall further
12 provide information regarding the status of each license and any changes in such license status
13 during the term of probation. Respondent shall inform the Board if she applies for or obtains a
14 new nursing license during the term of probation.

15 5. **Submit Written Reports.** Respondent, during the period of probation,
16 shall submit or cause to be submitted such written reports/declarations and verification of actions
17 under penalty of perjury, as required by the Board. These reports/declarations shall contain
18 statements relative to Respondent's compliance with all the conditions of the Board's Probation
19 Program. Respondent shall immediately execute all release of information forms as may be
20 required by the Board or its representatives.

21 Respondent shall provide a copy of this Decision to the nursing regulatory agency
22 in every state and territory in which she has a registered nurse license.

23 6. **Function as a Registered Nurse.** Respondent, during the period of
24 probation, shall engage in the practice of registered nursing in California for a minimum of 24
25 hours per week for 6 consecutive months or as determined by the Board.

26 For purposes of compliance with the section, "engage in the practice of registered
27 nursing" may include, when approved by the Board, volunteer work as a registered nurse, or
28 work in any non-direct patient care position that requires licensure as a registered nurse.

1 The Board may require that advanced practice nurses engage in advanced practice
2 nursing for a minimum of 24 hours per week for 6 consecutive months or as determined by the
3 Board.

4 If Respondent has not complied with this condition during the probationary term,
5 and Respondent has presented sufficient documentation of her good faith efforts to comply with
6 this condition, and if no other conditions have been violated, the Board, in its discretion, may
7 grant an extension of Respondent's probation period up to one year without further hearing in
8 order to comply with this condition. During the one year extension, all original conditions of
9 probation shall apply.

10 **7. Employment Approval and Reporting Requirements.** Respondent
11 shall obtain prior approval from the Board before commencing or continuing any employment,
12 paid or voluntary, as a registered nurse. Respondent shall cause to be submitted to the Board all
13 performance evaluations and other employment related reports as a registered nurse upon request
14 of the Board.

15 Respondent shall provide a copy of this Decision to her employer and immediate
16 supervisors prior to commencement of any nursing or other health care related employment.

17 In addition to the above, Respondent shall notify the Board in writing within
18 seventy-two (72) hours after she obtains any nursing or other health care related employment.
19 Respondent shall notify the Board in writing within seventy-two (72) hours after she is
20 terminated or separated, regardless of cause, from any nursing, or other health care related
21 employment with a full explanation of the circumstances surrounding the termination or
22 separation.

23 **8. Supervision.** Respondent shall obtain prior approval from the Board
24 regarding Respondent's level of supervision and/or collaboration before commencing or
25 continuing any employment as a registered nurse, or education and training that includes patient
26 care.

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1 Respondent shall practice only under the direct supervision of a registered nurse
2 in good standing (no current discipline) with the Board of Registered Nursing, unless alternative
3 methods of supervision and/or collaboration (e.g., with an advanced practice nurse or physician)
4 are approved.

5 Respondent's level of supervision and/or collaboration may include, but is not
6 limited to the following:

7 (a) Maximum - The individual providing supervision and/or collaboration is
8 present in the patient care area or in any other work setting at all times.

9 (b) Moderate - The individual providing supervision and/or collaboration is in
10 the patient care unit or in any other work setting at least half the hours Respondent works.

11 (c) Minimum - The individual providing supervision and/or collaboration has
12 person-to-person communication with Respondent at least twice during each shift worked.

13 (d) Home Health Care - If Respondent is approved to work in the home health
14 care setting, the individual providing supervision and/or collaboration shall have person-to-
15 person communication with Respondent as required by the Board each work day. Respondent
16 shall maintain telephone or other telecommunication contact with the individual providing
17 supervision and/or collaboration as required by the Board during each work day. The individual
18 providing supervision and/or collaboration shall conduct, as required by the Board, periodic, on-
19 site visits to patients' homes visited by Respondent with or without Respondent present.

20 9. **Employment Limitations.** Respondent shall not work for a nurse's
21 registry, in any private duty position as a registered nurse, a temporary nurse placement agency, a
22 traveling nurse, or for an in-house nursing pool.

23 Respondent shall not work for a licensed home health agency as a visiting nurse
24 unless the registered nursing supervision and other protections for home visits have been
25 approved by the Board. Respondent shall not work in any other registered nursing occupation
26 where home visits are required.

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1 Respondent shall not work in any health care setting as a supervisor of registered
2 nurses. The Board may additionally restrict Respondent from supervising licensed vocational
3 nurses and/or unlicensed assistive personnel on a case-by-case basis.

4 Respondent shall not work as a faculty member in an approved school of nursing
5 or as an instructor in a Board approved continuing education program.

6 Respondent shall work only on a regularly assigned, identified and predetermined
7 worksite(s) and shall not work in a float capacity. If Respondent is working or intends to work in
8 excess of 40 hours per week, the Board may request documentation to determine whether there
9 should be restrictions on the hours of work.

10 **10. Complete a Nursing Course(s).** Respondent, at her own expense, shall
11 enroll and successfully complete a course(s) relevant to the practice of registered nursing no later
12 than six months prior to the end of her probationary term.

13 Respondent shall obtain prior approval from the Board before enrolling in the
14 course(s). Respondent shall submit to the Board the original transcripts or certificates of
15 completion for the above required course(s). The Board shall return the original documents to
16 Respondent after photocopying them for its records.

17 **11. Cost Recovery.** Respondent shall pay to the Board costs associated with
18 its investigation and enforcement pursuant to Business and Professions Code section 125.3 in the
19 amount of Two Thousand One Hundred Forty Eight Dollars and Fifty Cents (\$2,148.50).
20 Respondent shall be permitted to pay these costs in a payment plan approved by the Board, with
21 payments to be completed no later than three months prior to the end of the probation term.

22 If Respondent has not complied with this condition during the probationary term,
23 and Respondent has presented sufficient documentation of her good faith efforts to comply with
24 this condition, and if no other conditions have been violated, the Board, in its discretion, may
25 grant an extension of Respondent's probation period up to one year without further hearing in
26 order to comply with this condition. During the one year extension, all original conditions of
27 probation will apply.

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1 12. **Violation of Probation.** If Respondent violates the conditions of her
2 probation, the Board after giving Respondent notice and an opportunity to be heard, may set
3 aside the stay order and impose the stayed discipline (revocation/suspension) of Respondent's
4 license.

5 If during the period of probation, an accusation or petition to revoke probation has
6 been filed against Respondent's license or the Attorney General's Office has been requested to
7 prepare an accusation or petition to revoke probation against Respondent's license, the
8 probationary period shall automatically be extended and shall not expire until the accusation or
9 petition has been acted upon by the Board.

10 13. **License Surrender.** During Respondent's term of probation, if she ceases
11 practicing due to retirement, health reasons or is otherwise unable to satisfy the conditions of
12 probation, Respondent may surrender her license to the Board. The Board reserves the right to
13 evaluate Respondent's request and to exercise its discretion whether to grant the request, or to
14 take any other action deemed appropriate and reasonable under the circumstances, without
15 further hearing. Upon formal acceptance of the tendered license and wall certificate, Respondent
16 will no longer be subject to the conditions of probation.

17 Surrender of Respondent's license shall be considered a disciplinary action and
18 shall become a part of Respondent's license history with the Board. A registered nurse whose
19 license has been surrendered may petition the Board for reinstatement no sooner than the
20 following minimum periods from the effective date of the disciplinary decision:

21 (1) Two years for reinstatement of a license that was surrendered for any
22 reason other than a mental or physical illness; or

23 (2) One year for a license surrendered for a mental or physical illness.

24 14. **Out-Of State.** Respondent shall be bound by the terms and conditions of
25 the Disciplinary Order at its effective date. However, the period of probation shall be tolled, and
26 the terms and conditions of the Disciplinary Order shall be stayed, until respondent enters the
27 State of California to practice nursing at a future date. Respondent shall give written notice to
28 the Board of her intention to practice nursing in California thirty (30) days prior to engaging in

1 any activity requiring a registered nurse license issued by the Board. Failure to comply with the
2 notice requirement shall constitute a violation of probation and a basis for revoking probation
3 and respondent's California nurse license.

4 **15. Physical Examination.** Within 45 days of the effective date of this
5 Decision, Respondent, at Respondent's expense, shall have a licensed physician, nurse
6 practitioner, or physician assistant, who is approved by the Board before the assessment is
7 performed, submit an assessment of the Respondent's physical condition and capability to
8 perform the duties of a registered nurse. Such an assessment shall be submitted in a format
9 acceptable to the Board. *If medically determined, a recommended treatment program will be*
10 *instituted and followed by the Respondent with the physician, nurse practitioner, or physician*
11 *assistant providing written reports to the Board on forms provided by the Board.*

12 If Respondent is determined to be unable to practice safely as a registered nurse,
13 the licensed physician, nurse practitioner, or physician assistant making this determination shall
14 *immediately notify the Board and Respondent by telephone, and the Board shall request that the*
15 *Attorney General's office prepare an accusation or petition to revoke probation. Respondent*
16 *shall immediately cease practice and shall not resume practice until notified by the Board.*
17 *During this period of suspension, Respondent shall not engage in any practice for which a license*
18 *issued by the Board is required until the Board has notified Respondent that a medical*
19 *determination permits Respondent to resume practice. This period of suspension will not apply*
20 *to the reduction of this probationary time period.*

21 If Respondent fails to have the above assessment submitted to the Board within
22 the 45-day requirement, Respondent shall immediately cease practice and shall not resume
23 practice until notified by the Board. *This period of suspension will not apply to the reduction of*
24 *this probationary time period. The Board may waive or postpone this suspension only if*
25 *significant, documented evidence of mitigation is provided. Such evidence must establish good*
26 *faith efforts by Respondent to obtain the assessment, and a specific date for compliance must be*
27 *provided. Only one such waiver or extension may be permitted.*

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1 16. **Participate in Treatment/Rehabilitation Program for Chemical**
2 **Dependence.** Respondent, at Respondent's expense, shall successfully complete during the
3 probationary period or shall have successfully completed prior to commencement of probation a
4 Board-approved treatment/rehabilitation program of at least six months duration. As required,
5 reports shall be submitted by the program on forms provided by the Board. If Respondent has
6 not completed a Board-approved treatment/rehabilitation program prior to commencement of
7 probation, Respondent, within 45 days from the effective date of the decision, shall be enrolled in
8 a program. If a program is not successfully completed within the first nine months of probation,
9 the Board shall consider Respondent in violation of probation.

10 Based on Board recommendation, each week Respondent shall be required to
11 attend at least one, but no more than five 12-step recovery meetings or equivalent (e.g., Narcotics
12 Anonymous, Alcoholics Anonymous, etc.) and a nurse support group as approved and directed
13 by the Board. If a nurse support group is not available, an additional 12-step meeting or
14 equivalent shall be added. Respondent shall submit dated and signed documentation confirming
15 such attendance to the Board during the entire period of probation. Respondent shall continue
16 with the recovery plan recommended by the treatment/rehabilitation program or a licensed
17 mental health examiner and/or other ongoing recovery groups.

18 17. **Abstain from Use of Psychotropic (Mood-Altering) Drugs.** Respondent
19 shall completely abstain from the possession, injection or consumption by any route of all
20 controlled substances and all psychotropic (mood altering) drugs, including alcohol, except when
21 the same are ordered by a health care professional legally authorized to do so as part of
22 documented medical treatment. Respondent shall have sent to the Board, in writing and within
23 fourteen (14) days, by the prescribing health professional, a report identifying the medication,
24 dosage, the date the medication was prescribed, the Respondent's prognosis, the date the
25 medication will no longer be required, and the effect on the recovery plan, if appropriate.

26 Respondent shall identify for the Board a single physician, nurse practitioner or
27 physician assistant who shall be aware of Respondent's history of substance abuse and will
28 coordinate and monitor any prescriptions for Respondent for dangerous drugs, controlled

1 substances or mood-altering drugs. The coordinating physician, nurse practitioner, or physician
2 assistant shall report to the Board on a quarterly basis Respondent's compliance with this
3 condition. If any substances considered addictive have been prescribed, the report shall identify a
4 program for the time limited use of any such substances.

5 The Board may require the single coordinating physician, nurse practitioner, or
6 physician assistant to be a specialist in addictive medicine, or to consult with a specialist in
7 addictive medicine.

8 18. **Submit to Tests and Samples.** Respondent, at Respondent's expense,
9 shall participate in a random, biological fluid testing or a drug screening program which the
10 Board approves. The length of time and frequency will be subject to approval by the Board.
11 Respondent is responsible for keeping the Board informed of Respondent's current telephone
12 number at all times. Respondent shall also ensure that messages may be left at the telephone
13 number when Respondent is not available and ensure that reports are submitted directly by the
14 testing agency to the Board, as directed. Any confirmed positive finding shall be reported
15 immediately to the Board by the program and Respondent shall be considered in violation of
16 probation.

17 In addition, Respondent, at any time during the period of probation, shall fully
18 cooperate with the Board or any of its representatives, and shall, when requested, submit to such
19 tests and samples as the Board or its representatives may require for the detection of alcohol,
20 narcotics, hypnotics, dangerous drugs, or other controlled substances.

21 If Respondent has a positive drug screen for any substance not legally authorized
22 and not reported to the coordinating physician, nurse practitioner, or physician assistant, and the
23 Board files a petition to revoke probation or an accusation, the Board may suspend Respondent
24 from practice pending the final decision on the petition to revoke probation or the accusation.
25 This period of suspension will not apply to the reduction of this probationary time period.

26 If Respondent fails to participate in a random, biological fluid testing or drug
27 screening program within the specified time frame, Respondent shall immediately cease practice
28 and shall not resume practice until notified by the Board. After taking into account documented

1 evidence of mitigation, if the Board files a petition to revoke probation or an accusation, the
2 Board may suspend Respondent from practice pending the final decision on the petition to
3 revoke probation or the accusation. This period of suspension will not apply to the reduction of
4 this probationary time period.

5 **19. Mental Health Examination.** Respondent shall, within 45 days of the
6 effective date of this Decision, have a mental health examination including psychological testing
7 as appropriate to determine Respondent's capability to perform the duties of a registered nurse.
8 The examination will be performed by a psychiatrist, psychologist or other licensed mental health
9 practitioner approved by the Board. The examining mental health practitioner will submit a
10 written report of that assessment and recommendations to the Board. All costs are the
11 responsibility of Respondent. Recommendations for treatment, therapy or counseling made as a
12 result of the mental health examination will be instituted and followed by Respondent.

13 If Respondent is determined to be unable to practice safely as a registered nurse,
14 the licensed mental health care practitioner making this determination shall immediately notify
15 the Board and Respondent by telephone, and the Board shall request that the Attorney General's
16 office prepare an accusation or petition to revoke probation. Respondent shall immediately cease
17 practice and may not resume practice until notified by the Board. During this period of
18 suspension, Respondent shall not engage in any practice for which a license issued by the Board
19 is required, until the Board has notified Respondent that a mental health determination permits
20 Respondent to resume practice. This period of suspension will not apply to the reduction of this
21 probationary time period.

22 If Respondent fails to have the above assessment submitted to the Board within
23 the 45-day requirement, Respondent shall immediately cease practice and shall not resume
24 practice until notified by the Board. This period of suspension will not apply to the reduction of
25 this probationary time period. The Board may waive or postpone this suspension only if
26 significant, documented evidence of mitigation is provided. Such evidence must establish good
27 faith efforts by Respondent to obtain the assessment, and a specific date for compliance must be
28 provided. Only one such waiver or extension may be permitted.

20. **Therapy or Counseling Program.** Respondent, at Respondent's expense, shall participate in an on-going counseling program until such time as the Board releases Respondent's from this requirement and only upon the recommendation of the counselor. Written progress reports from the counselor will be required at various intervals.

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order. I understand the stipulation and the effect it will have on my Registered Nurse License. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of Registered Nursing.

DATED: 5/1/07

Debra J. Marciochi
DEBRA J. MARCIOCCHI
Respondent

ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Board of Registered Nursing of the Department of Consumer Affairs.

DATED: July 10, 2007

EDMUND G. BROWN, JR. Attorney General
of the State of California

ARTHUR D. TAGGART
Supervising Deputy Attorney General

Jessica M. Amgwerd
JESSICA M. AMGWERD
Deputy Attorney General

Attorneys for Complainant

Exhibit A
Accusation No. 2007-194

1 BILL LOCKYER, Attorney General
of the State of California
2 ARTHUR D. TAGGART
Supervising Deputy Attorney General
3 JESSICA M. AMGWERD, State Bar No. 155757
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Facsimile: (916) 327-8643

7 Attorneys for Complainant

8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 2007-194

13 **DEBRA J. MARCIOCCI, aka**
14 **DEBRA JEAN FRANZ, aka**
15 **DEBRA JEAN DAWSON**
914 East Decatur
Fresno, California 93720

ACCUSATION

16 Registered Nurse License No. 456511

Respondent.

17
18 Ruth Ann Terry, M.P.H., R.N. ("Complainant") alleges:

19 **PARTIES**

20 1. Complainant brings this Accusation solely in her official capacity as the
21 Executive Officer of the Board of Registered Nursing, Department of Consumer Affairs.

22 **Registered Nurse License**

23 2. On or about August 31, 1990, the Board of Registered Nursing issued
24 Registered Nurse License Number 456511 ("license") to Debra J. Marciocchi, also known as
25 Debra Jean Franz and Debra Jean Dawson ("Respondent"). The license was in full force and
26 effect at all times relevant to the charges brought herein and will expire on February 29, 2008,
27 unless renewed.

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JURISDICTION

3. Section 2750 of the Business and Professions Code ("Code") provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with Code section 2750) of the Nursing Practice Act.

4. Code section 2764 provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under Code section 2811, subdivision (b), the Board may renew an expired license at any time within eight years after the expiration.

5. Code section 118, subdivision (b), provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

STATUTORY PROVISIONS

6. Code section 2761 states, in pertinent part:

The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

(a) Unprofessional conduct

7. Code section 2762 states, in pertinent part:

In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this chapter to do any of the following:

(a) Obtain or possess in violation of law, or prescribe, or except as directed by a licensed physician and surgeon, dentist, or podiatrist administer to himself or herself, or furnish or administer to another, any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code or any dangerous drug or dangerous device as defined in Section 4022.

(b) Use any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to himself or herself, any other person, or

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1 the public or to the extent that such use impairs his or her ability to conduct with
2 safety to the public the practice authorized by his or her license.

3 8. Code section 4060 states, in pertinent part:

4 No person shall possess any controlled substance, except that furnished to
5 a person upon the prescription of a physician, dentist, podiatrist, or veterinarian,
6 or furnished pursuant to a drug order issued by a certified nurse-midwife pursuant
7 to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a physician
8 assistant pursuant to Section 3502.1. This section shall not apply to the
possession of any controlled substance by a manufacturer, wholesaler, pharmacy,
physician, podiatrist, dentist, veterinarian, certified nurse-midwife, nurse
practitioner, or physician assistant, when in stock in containers correctly labeled
with the name and address of the supplier or producer.

9 9. Health and Safety Code section 11173, subdivision (a) provides that no
10 person shall obtain or attempt to obtain controlled substances, or procure or attempt to procure
11 the administration of or prescription for controlled substances, (1) by fraud, deceit,
12 misrepresentation, or subterfuge; or (2) by the concealment of a material fact.

13 COST RECOVERY

14 10. Code section 125.3 provides, in pertinent part, that the Board may request
15 the administrative law judge to direct a licentiate found to have committed a violation or
16 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
17 and enforcement of the case.

18 11. DRUGS

19 "Benzodiazopines" are a generic classification for drugs consisting of Schedule
20 IV controlled substances and dangerous drugs within the meaning of Business and Professions
21 Code section 4022 in that they require a prescription under federal law.

22 "Codeine" is a Schedule II controlled substance as designated by Health and
23 Safety Code section 11055, subdivision (b)(1)(H).

24 "Fentanyl" is a Schedule II controlled substance as designated by Health and
25 Safety Code section 11055, subdivision (c)(8).

26 "Opiates" are Schedule II controlled substances as designated by Health and
27 Safety Code section 11055, subdivision (c) and dangerous drugs within the meaning of Business
28 and Professions Code section 4022 in that they require a prescription under federal law.

1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Obtained and Possessed a Controlled Substance in**
3 **Violation of Law, and Self-Administration of Controlled Substances)**

4 12. Respondent has subjected her licenses to discipline under Code section
5 2761, subdivision (a), on the grounds of unprofessional conduct, as defined in Code section
6 2762, subdivision (a), in that Respondent committed acts, as follows:

7 a. On or about March 25, 2002, Respondent obtained fentanyl, a controlled
8 substance, by fraud, deceit, misrepresentation or subterfuge, by taking the drug from hospital
9 supplies, in violation of Health and Safety Code section 11173, subdivision (a).

10 b. On or about March 25, 2002, Respondent possessed fentanyl, a controlled
11 substance, in violation of Code section 4060.

12 c. On or about March 25, 2002, Respondent self-administered fentanyl
13 without a lawful prescription.

14 d. On or about July 29, 2004, Respondent possessed opiates and codeine,
15 both controlled substances, in violation of Code section 4060.

16 e. On or about July 29, 2004, Respondent self-administered opiates and
17 codeine, both controlled substances, without a lawful prescription.

18 f. On or about January 10, 2005, Respondent possessed benzodiazepines, a
19 controlled substance, in violation of Code section 4060.

20 g. On or about January 10, 2005, Respondent self-administered
21 benzodiazepines without a lawful prescription.

22 h. On or about January 18, 2005, Respondent possessed benzodiazepines , a
23 controlled substance, in violation of Code section 4060.

24 i. On or about January 18, 2005, Respondent self administered
25 benzodiazepines without a lawful prescription.

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1 **SECOND CAUSE FOR DISCIPLINE**

2 **(Use a Controlled Substance to an Extent or in a Manner**
3 **Dangerous or Injurious to Herself)**

4 13. Respondent has subjected her license to discipline under Code section
5 2761, subdivision (a), on the grounds of unprofessional conduct, as defined by Code section
6 2762, subdivision (b), in that on or about March 25, 2002, Respondent used fentanyl, a controlled
7 substance to an extent or in a manner dangerous or injurious to herself.

8 **PRAYER**


9 WHEREFORE, Complainant requests that a hearing be held on the matters herein
10 alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

11 1. Revoking or suspending Registered Nurse License Number 456511, issued
12 to Debra J. Marciocchi, also known as Debra Jean Franz and Debra Jean Dawson;

13 2. Ordering Debra J. Marciocchi, also known as Debra Jean Franz and
14 Debra Jean Dawson to pay the Board of Registered Nursing the reasonable costs of the
15 investigation and enforcement of this case, pursuant to Code section 125.3; and,

16 3. Taking such other and further action as deemed necessary and proper.
17

18 DATED: 11/8/07
19

20 
21 RUTH ANN TERRY, M.P.H., R.N.
22 Executive Officer
23 Board of Registered Nursing
24 Department of Consumer Affairs
25 State of California
26 Complainant